Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
AT&T Petition for Declaratory Ruling	)	WC Docket No. 02-361
that AT&T's Phone-to-Phone IP	)	
Telephony Services are Exempt from	)	
Access Charges	)	

COMMENTS OF GVNW CONSULTING, INC.

Introduction and Background

GVNW Consulting, Inc. (GVNW) is a management consulting firm that provides a wide variety of consulting services, including regulatory support on issues such as universal service, advanced services, and access charge reform for communications carriers in rural America. We are pleased that the Commission has requested comments and replies on AT&T's attempt to avoid compensating ILECs for the use of their assets and facilities.

The purpose of these initial comments is to respond to the Commission's Public Notice seeking comments and replies on the petition filed on October 18, 2002, by AT&T Corp (AT&T). In its Petition for a Declaratory Ruling, AT&T requested that its Phone-to-Phone IP Telephony Services be considered exempt from interstate access charges unless and until the Commission adopts regulations that prospectively provide otherwise (AT&T Petition at 33).

In brief, AT&T asserts (incorrectly we believe) that ILEC access charges on its phone-to-phone IP telephony services violate the Congressional mandate to preserve a competitive free market for the Internet and the Commission's policy of exempting all VoIP services from access charges pending the future adoption of regulations on this subject (AT&T Petition at 2). As we will show in our comments, AT&T has merely made a change in its internal network, not the service offered nor method of interconnection with the ILECs.

Summary of Comments

We believe the Commission should reject AT&T's instant petition in this docket that seeks to avoid compensating ILECs for the use of their exchange access facilities and amend portions of Part 69 of its rules for the following reasons:

1) AT&T's petition ignores that ILECs must be compensated for the use of their facilities and assets;

2) AT&T attempts to use a change in technology platform, while continuing to offer the same service as currently offered by their circuit-based voice technologies, as a guise to avoid compensating ILECs for use of local exchange facilities;

3) AT&T's reliance on the "Nascent Service" claim is specious;

4) ILEC actions criticized by AT&T in its petition are attempts to recover legitimate compensation for use of ILEC facilities;

5) AT&T's petition highlights the different regulatory interpretations currently in play.

GVNW Consulting, Inc. now offers further detail on the five points above with the following comments that recommend the rejection by the Commission of AT&T's Petition in WC Docket No. 02-361.

AT&T's PETITION IGNORES THAT ILECs STILL MUST BE COMPENSATED FOR THE USE OF THEIR FACILITIES AND ASSETS

Technologies change. Bankruptcies happen. And the one constant is that rural ILECs continue to provide the critical infrastructure that enables Americans to realize the promise of the Telecommunications Act of 1996 and ensures a national communications network in times of crises or emergency. But this cannot continue to happen if interexchange carriers that use their facilities do not compensate rural carriers.

AT&T's change in delivery vehicle does not change the product they are offering to end users, nor reduce an ILECs cost a single dollar. The ILEC still must perform the access functions, as the location and method of operation of the calling and called parties have not changed. Carriers that provide interexchange phone-to-phone telecommunications services via the public switched network are currently required to pay access charges under Commission rules.

AT&T ATTEMPTS TO USE A CHANGE IN TECHNOLOGY PLATFORM, WHILE CONTINUING TO OFFER THE SAME SERVICE AS CURRENTLY OFFERED BY THEIR CIRCUIT BASED VOICE TECHNOLOGIES, AS A GUISE TO AVOID COMPENSATING ILECs FOR USE OF LOCAL EXCHANGE FACILITIES

Access is indifferent to the technology under current Commission rules. The Commission should continue to apply its policy of technological neutrality to the application of interstate access charges. A public policy that would permit carriers to avoid access charges due to a particular choice of technology within their delivery platform, without changing the costs of the ILEC, would be patently unfair and unlawful. This would create a confiscation scenario. The last eighteen years have seen a migration from copper to fiber, from analog to digital switching, and the beginning of the transition from circuit to packet (IP) switching. However, the end user realizes the same voice

communications experience with all these technologies. AT&T has merely made a change in its internal network, not the service offered nor method of interconnection with the ILECs. Access should continue to exist in the intercarrier compensation regime when calls are originated or terminated, regardless of the transport technology. This is especially necessary for calls that terminate to a phone that is part of the public switched network. AT&T disingenuously seeks to alter the business relationship that currently exists under law due to a choice of transmission technology that they are freely making of their own accord.

What's different?

Today, virtually all long haul voice traffic is digitized into data streams over DS-1, DS-3, or OC (optical) type platforms, with access charges that have recently been reduced in either the CALLS or Rural Access Reform orders in full effect. AT&T's instant petition fails to provide adequate evidence of a "new platform". Many carriers in addition to AT&T already use Internet Protocol within their internal delivery platforms. The IP "choice" highlighted in the petition scenario is in simplest form a set of rules for formatting data packets, and in theory is no more complicated than formats such as X.25 or x.75. Attempting to distinguish IP by stating that the voice data is digitized (AT&T Petition at 9) is not relevant to the lawful application of interstate access charges, nor is it anything new. Since the 1960's, T-1 technology has been in common use in telecommunications networks to digitize voice traffic. All AT&T has done is change from one digital protocol to another within their internal network. The one difference, which is certainly not sufficient to eliminate the applicability of interstate access, is that

the ISP router simply functions in a similar manner to the toll tandem switch with respect to routing the call for transport and ultimate termination with the called party or parties.

In its petition, AT&T is basically hiding voice telephone service behind technological terms. The service provided to the customer is the same. Regulation of services should be based on the service offered, not the technology. If one technology is favored over another by regulatory fiat, as AT&T requests, this creates a non-market based differential that will cause uneconomical selection of one technology over another, resulting ultimately in higher costs to the end user.

AT&T's RELIANCE ON THE "NASCENT SERVICE" CLAIM IS SPECIOUS

AT&T also uses the argument that their VoIP offerings should be considered as nascent services, and accordingly be considered exempt from interstate access charges (AT&T Petition at 2). In the past, the Commission has granted nascent services a period of time to become established in the market for the sake of competition. What AT&T outlines in its petition is not a new service, as we discuss in the preceding section, and does not deserve special treatment. AT&T is using its instant petition as a screen to avoid or circumvent existing FCC rules and regulations.

AT&T operates in a portion of the telecommunications market that could be considered perhaps troubled, and certainly challenged. But, it is not the responsibility of the ILEC segment of the telecommunications market to forego collecting compensation for use of its facilities in order to jumpstart a new AT&T technology platform within AT&T's internal network. AT&T's request is similar to asking a landlord to forego rent from a tenant business so the tenant can use the money they save by not paying rent to upgrade its internal operating policies or paying corporate bonuses.

AT&T also attempts to cloud the debate by cleverly interchanging the terms Internet and Internet Protocol. Internet is in fact a network, that is not owned by AT&T, but by many different government organizations, educational institutions, and commercial Internet Service Providers. These entities typically lease capacity on underlying carriers. The Internet uses Internet Protocol, as do many other networks. AT&T's choice to deploy Internet Protocol to their own long distance network is not a choice to use the Internet, but rather a choice of operating protocol on their own network. As such, it is not a new service. Indeed, many of the Internet providers have offered various forms of Voice over IP technology for 3-5 years, often between computers or customer owned Local Area Networks (LANs). Indeed, some of AT&T's competitors, such as Sprint and WorldCom, have used IP Protocol on their Internet networks for the past 2-3 years for at least some voice traffic. Thus, AT&T's claim that their service is new is unfounded, and an attempt to confuse the issues.

AT&T appears to contend that (AT&T Petition at 7-8) it should be able to avoid the payment of interstate access charges for IP telephony by asserting that the service is an "information service". We do not believe that the ISP exemption should apply to phone-to-phone IP telephony. In the Commission's 1998 *Universal Service Report*, the FCC was correct in the portion of its initial conclusion that phone-to-phone configurations are telecommunications services. We contend that AT&T is misconstruing the Commission's further statements in the aforementioned 1998 report where the FCC discusses that it "may find it reasonable" to require certain forms of phone-to-phone IP telephony services to pay access charges. We believe the current rules in effect for federal and state intercarrier compensation regimes require the

assessment and payment of access charges for the IP phone-to-phone service discussed in this instant petition.

On Page 5 of its petition, AT&T states that the services provided in their petition "required large investments to upgrade Internet backbone facilities". If AT&T were merely terminating traffic over the Internet, the investment would be spread among many providers, rather than AT&T only, which leads one to the conclude that, if AT&T spent the "large investments", this must not be the public Internet under discussion at all, but rather AT&T's own internal long distance network that was upgraded. In addition, AT&T's real argument here appears not to be, as they assert, that the Internet needs protecting, but rather that "the upgrades cost AT&T so much that AT&T should be exempted from access charges so AT&T can make a profit". It is not the FCC's mission to protect AT&T, or any other carrier, from the large investments required to compete in the telecommunications business by changing the rules to allow any party to avoid paying interstate access charges to ILECs to compensate the ILEC for the costs required to provide service to the end user.

ILEC ACTIONS CRITICIZED BY AT&T IN ITS PETITION ARE ATTEMPTS TO RECOVER LEGITIMATE COMPENSATION FOR USE OF ITS FACILITIES

In the Petition (AT&T Petition at 23), AT&T asserts that ILECs are attempting to impose access charges by: 1) refusing to provision end user services to terminate AT&T's phone-to-phone IP telephony services; 2) refusing to complete phone-to-phone IP telephony calls over facilities that have been provisioned; and 3) assessing interstate access charges on phone-to-phone IP telephony calls from other states that are terminated through CLEC and ILEC reciprocal compensation trunks.

AT&T proposed choice of one specific protocol, or for that matter any carrier's choice of routing its customer traffic over private data facilities, microwave, the carrier's own Internet backbone, or the "Internet" does not magically change a phone-to-phone call into something other than **what it is: subject to interstate access charges under the Commission's rules**. The transmission of an interexchange call via IP is no different, with respect to the applicability of interstate access charges, than any other means of transmission.

AT&T's PETITION HIGHLIGHTS THE DIFFERENT REGULATORY INTERPRETATIONS CURRENTLY IN PLAY

AT&T makes certain assertions that access is priced incorrectly (AT&T Petition at 25). This ignores, to a large degree, the progress that the Commission has made in its CALLS and rural access reform orders. However, we should not be surprised that AT&T seeks to attack the transport and transmission elements of access. After the elimination of the carrier common line charge and the large reductions in switching rates, this is virtually the only area left for IXCs to complain about.

The Commission should include in its deliberations a review of some of the state decisions on this topic. For instance, in a recent New York PSC order[1], the NYPSC points out what is actually happening – the IP merely performs the transmission between the calling party in one exchange and the called party in another exchange.

[1] Complaint of Frontier Telephone of Rochester Against US DataNet Corporation Concerning Alleged Refusal to Pay Intrastate Carrier Access Charges, No. 01-C-1119 (N.Y. Public Service Commission May 31, 2002).

RECOMMENDATIONS

The Commission should, with respect to AT&T's instant petition in WC Docket No. 02-361, take the following action:

1) Deny the petition; and

2) Order that interstate access charges will continue to apply in cases where carriers are utilizing ILEC facilities. If the Commission is truly interested in competitive neutrality, then access charges need to be assessed to all providers of telecommunications services, regardless of the technology or network used to provision the service.

The Commission should clarify the application of interstate access charges by amending 47 CFR 69.2(b) to read as follows:

69.2 Definitions

(b) Access service includes services and facilities provided for the origination or termination of any interstate or foreign telecommunication. If the call is neither originated nor terminated by the end user in Internet protocol, the call is not an enhanced service and access charges apply. Any carrier utilizing the public switched telephone network to originate from a phone, or terminate to a phone, interexchange telecommunications services is considered to be using an access service, and is accordingly subject to access charges.

Respectfully submitted,

electronically submitted through ECFS

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